AMENDED IN SENATE JUNE 26, 2007

AMENDED IN ASSEMBLY APRIL 10, 2007

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

# ASSEMBLY BILL No. 1224

**Introduced by Assembly Member Hernandez**

February 23, 2007

An act to amend Sections ~~805~~ *2290.5* and 3041 of the Business and Professions Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

AB 1224, as amended, Hernandez. Optometrists: ~~peer review process:~~ telemedicine.

Existing law ~~provides for the professional review of specified healing arts licentiates, as defined, through a peer review process~~, *the Optometry Practice Act, creates the State Board of Optometry that licenses optometrists and regulates their practice. The act defines the practice of optometry as including the treatment of primary open angle glaucoma with the participation, as specified, of a collaborating ophthalmologist*. Existing law, the Medical Practice Act, regulates the practice of telemedicine, defined as the practice of health care delivery, diagnosis, consultation, treatment, transfer of medical data, and education using interactive audio, video, or data communications. ~~Existing law requires that, prior to the delivery of health care via telemedicine, the~~, *by a* health care practitioner, *as* defined ~~as a licentiate subject to the peer review process, who has ultimate authority over the care or primary diagnosis of the patient shall obtain verbal and written informed consent from the patient or the patient's legal representative~~. A violation of the provisions governing telemedicine is unprofessional conduct.

This bill would ~~include~~ *make* a licensed optometrist ~~in the definition of licentiate, subject to the peer review process, and would make him or her a health care practitioner for purposes of the~~ *subject to these* telemedicine provisions *and would define collaborating ophthalmologist for purposes of his or her participation in treating primary open angle glaucoma*.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

*The people of the State of California do enact as follows:*

~~SECTION 1. Section 805 of the Business and Professions Code is amended to read:~~

~~805. (a) As used in this section, the following terms have the following definitions:~~

~~(1) "Peer review body" includes:~~

~~(A) A medical or professional staff of any health care facility or clinic licensed under Division 2 (commencing with Section 1200) of the Health and Safety Code or of a facility certified to participate in the federal Medicare Program as an ambulatory surgical center.~~

~~(B) A health care service plan registered under Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code or a disability insurer that contracts with licentiates to provide services at alternative rates of payment pursuant to Section 10133 of the Insurance Code.~~

~~(C) Any medical, psychological, marriage and family therapy, social work, dental, podiatric, or optometric professional society having as members at least 25 percent of the eligible licentiates in the area in which it functions (which must include at least one county), that is not organized for profit and that has been determined to be exempt from taxes pursuant to Section 23701 of the Revenue and Taxation Code.~~

~~(D) A committee organized by any entity consisting of or employing more than 25 licentiates of the same class that functions for the purpose of reviewing the quality of professional care provided by members or employees of that entity.~~

~~(2) "Licentiate" means a physician and surgeon, doctor of podiatric medicine, clinical psychologist, marriage and family therapist, clinical social worker, dentist, or optometrist. "Licentiate"~~

~~also includes a person authorized to practice medicine pursuant to Section 2113.~~

~~(3) "Agency" means the relevant state licensing agency having regulatory jurisdiction over the licentiates listed in paragraph (2).~~

~~(4) "Staff privileges" means any arrangement under which a licentiate is allowed to practice in or provide care for patients in a health facility. Those arrangements shall include, but are not limited to, full staff privileges, active staff privileges, limited staff privileges, auxiliary staff privileges, provisional staff privileges, temporary staff privileges, courtesy staff privileges, locum tenens arrangements, and contractual arrangements to provide professional services, including, but not limited to, arrangements to provide outpatient services.~~

~~(5) "Denial or termination of staff privileges, membership, or employment" includes failure or refusal to renew a contract or to renew, extend, or reestablish any staff privileges, if the action is based on medical disciplinary cause or reason.~~

~~(6) "Medical disciplinary cause or reason" means that aspect of a licentiate's competence or professional conduct that is reasonably likely to be detrimental to patient safety or to the delivery of patient care.~~

~~(7) "805 report" means the written report required under subdivision (b).~~

~~(b) The chief of staff of a medical or professional staff or other chief executive officer, medical director, or administrator of any peer review body and the chief executive officer or administrator of any licensed health care facility or clinic shall file an 805 report with the relevant agency within 15 days after the effective date of any of the following that occur as a result of an action of a peer review body:~~

~~(1) A licentiate's application for staff privileges or membership is denied or rejected for a medical disciplinary cause or reason.~~

~~(2) A licentiate's membership, staff privileges, or employment is terminated or revoked for a medical disciplinary cause or reason.~~

~~(3) Restrictions are imposed, or voluntarily accepted, on staff privileges, membership, or employment for a cumulative total of 30 days or more for any 12-month period, for a medical disciplinary cause or reason.~~

~~(c) The chief of staff of a medical or professional staff or other chief executive officer, medical director, or administrator of any~~

~~peer review body and the chief executive officer or administrator of any licensed health care facility or clinic shall file an 805 report with the relevant agency within 15 days after any of the following occur after notice of either an impending investigation or the denial or rejection of the application for a medical disciplinary cause or reason:~~

~~(1) Resignation or leave of absence from membership, staff, or employment.~~

~~(2) The withdrawal or abandonment of a licentiate's application for staff privileges or membership.~~

~~(3) The request for renewal of those privileges or membership is withdrawn or abandoned.~~

~~(d) For purposes of filing an 805 report, the signature of at least one of the individuals indicated in subdivision (b) or (c) on the completed form shall constitute compliance with the requirement to file the report.~~

~~(e) An 805 report shall also be filed within 15 days following the imposition of summary suspension of staff privileges, membership, or employment, if the summary suspension remains in effect for a period in excess of 14 days.~~

~~(f) A copy of the 805 report, and a notice advising the licentiate of his or her right to submit additional statements or other information pursuant to Section 800, shall be sent by the peer review body to the licentiate named in the report.~~

~~The information to be reported in an 805 report shall include the name and license number of the licentiate involved, a description of the facts and circumstances of the medical disciplinary cause or reason, and any other relevant information deemed appropriate by the reporter.~~

~~A supplemental report shall also be made within 30 days following the date the licentiate is deemed to have satisfied any terms, conditions, or sanctions imposed as disciplinary action by the reporting peer review body. In performing its dissemination functions required by Section 805.5, the agency shall include a copy of a supplemental report, if any, whenever it furnishes a copy of the original 805 report.~~

~~If another peer review body is required to file an 805 report, a health care service plan is not required to file a separate report with respect to action attributable to the same medical disciplinary cause or reason. If the Medical Board of California or a licensing~~

~~agency of another state revokes or suspends, without a stay, the license of a physician and surgeon, a peer review body is not required to file an 805 report when it takes an action as a result of the revocation or suspension.~~

~~(g) The reporting required by this section shall not act as a waiver of confidentiality of medical records and committee reports. The information reported or disclosed shall be kept confidential except as provided in subdivision (c) of Section 800 and Sections 803.1 and 2027, provided that a copy of the report containing the information required by this section may be disclosed as required by Section 805.5 with respect to reports received on or after January 1, 1976.~~

~~(h) The Medical Board of California, the Osteopathic Medical Board of California, and the Dental Board of California shall disclose reports as required by Section 805.5.~~

~~(i) An 805 report shall be maintained by an agency for dissemination purposes for a period of three years after receipt.~~

~~(j) No person shall incur any civil or criminal liability as the result of making any report required by this section.~~

~~(k) A willful failure to file an 805 report by any person who is designated or otherwise required by law to file an 805 report is punishable by a fine not to exceed one hundred thousand dollars ($100,000) per violation. The fine may be imposed in any civil or administrative action or proceeding brought by or on behalf of any agency having regulatory jurisdiction over the person regarding whom the report was or should have been filed. If the person who is designated or otherwise required to file an 805 report is a licensed physician and surgeon, the action or proceeding shall be brought by the Medical Board of California. The fine shall be paid to that agency but not expended until appropriated by the Legislature. A violation of this subdivision may constitute unprofessional conduct by the licentiate. A person who is alleged to have violated this subdivision may assert any defense available at law. As used in this subdivision, "willful" means a voluntary and intentional violation of a known legal duty.~~

~~(*l*) Except as otherwise provided in subdivision (k), any failure by the administrator of any peer review body, the chief executive officer or administrator of any health care facility, or any person who is designated or otherwise required by law to file an 805 report, shall be punishable by a fine that under no circumstances~~

~~shall exceed fifty thousand dollars ($50,000) per violation. The fine may be imposed in any civil or administrative action or proceeding brought by or on behalf of any agency having regulatory jurisdiction over the person regarding whom the report was or should have been filed. If the person who is designated or otherwise required to file an 805 report is a licensed physician and surgeon, the action or proceeding shall be brought by the Medical Board of California. The fine shall be paid to that agency but not expended until appropriated by the Legislature. The amount of the fine imposed, not exceeding fifty thousand dollars ($50,000) per violation, shall be proportional to the severity of the failure to report and shall differ based upon written findings, including whether the failure to file caused harm to a patient or created a risk to patient safety; whether the administrator of any peer review body, the chief executive officer or administrator of any health care facility, or any person who is designated or otherwise required by law to file an 805 report exercised due diligence despite the failure to file or whether they knew or should have known that an 805 report would not be filed; and whether there has been a prior failure to file an 805 report. The amount of the fine imposed may also differ based on whether a health care facility is a small or rural hospital as defined in Section 124840 of the Health and Safety Code.~~

~~(m) A health care service plan registered under Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code or a disability insurer that negotiates and enters into a contract with licentiates to provide services at alternative rates of payment pursuant to Section 10133 of the Insurance Code, when determining participation with the plan or insurer, shall evaluate, on a case-by-case basis, licentiates who are the subject of an 805 report, and not automatically exclude or deselect these licentiates.~~

*SECTION 1. Section 2290.5 of the Business and Professions Code is amended to read:*

2290.5. (a) (1) For the purposes of this section, "telemedicine" means the practice of health care delivery, diagnosis, consultation, treatment, transfer of medical data, and education using interactive audio, video, or data communications. Neither a telephone conversation nor an electronic mail message between a health care practitioner and patient constitutes "telemedicine" for purposes of this section.

(2) For purposes of this section, "interactive" means an audio, video, or data communication involving a real time (synchronous) or near real time (asynchronous) two-way transfer of medical data and information.

(b) For the purposes of this section, "health care practitioner" has the same meaning as "licentiate" as defined in paragraph (2) of subdivision (a) of Section 805 *and also includes a person licensed as an optometrist pursuant to Chapter 7 (commencing with Section 3000)*.

(c) Prior to the delivery of health care via telemedicine, the health care practitioner who has ultimate authority over the care or primary diagnosis of the patient shall obtain verbal and written informed consent from the patient or the patient's legal representative. The informed consent procedure shall ensure that at least all of the following information is given to the patient or the patient's legal representative verbally and in writing:

(1) The patient or the patient's legal representative retains the option to withhold or withdraw consent at any time without affecting the right to future care or treatment nor risking the loss or withdrawal of any program benefits to which the patient or the patient's legal representative would otherwise be entitled.

(2) A description of the potential risks, consequences, and benefits of telemedicine.

(3) All existing confidentiality protections apply.

(4) All existing laws regarding patient access to medical information and copies of medical records apply.

(5) Dissemination of any patient identifiable images or information from the telemedicine interaction to researchers or other entities shall not occur without the consent of the patient.

(d) A patient or the patient's legal representative shall sign a written statement prior to the delivery of health care via telemedicine, indicating that the patient or the patient's legal representative understands the written information provided pursuant to subdivision (a), and that this information has been discussed with the health care practitioner, or his or her designee.

(e) The written consent statement signed by the patient or the patient's legal representative shall become part of the patient's medical record.

(f) The failure of a health care practitioner to comply with this section shall constitute unprofessional conduct. Section 2314 shall not apply to this section.

(g) All existing laws regarding surrogate decisionmaking shall apply. For purposes of this section, "surrogate decisionmaking" means any decision made in the practice of medicine by a parent or legal representative for a minor or an incapacitated or incompetent individual.

(h) Except as provided in paragraph (3) of subdivision (c), this section shall not apply when the patient is not directly involved in the telemedicine interaction, for example when one health care practitioner consults with another health care practitioner.

(i) This section shall not apply in an emergency situation in which a patient is unable to give informed consent and the representative of that patient is not available in a timely manner.

(j) This section shall not apply to a patient under the jurisdiction of the Department of Corrections or any other correctional facility.

(k) This section shall not be construed to alter the scope of practice of any health care provider or authorize the delivery of health care services in a setting, or in a manner, not otherwise authorized by law.

SEC. 2. Section 3041 of the Business and Professions Code is amended to read:

3041. (a) The practice of optometry includes the prevention and diagnosis of disorders and dysfunctions of the visual system, and the treatment and management of certain disorders and dysfunctions of the visual system, as well as the provision of rehabilitative optometric services, and is the doing of any or all of the following:

(1) The examination of the human eye or eyes, or its or their appendages, and the analysis of the human vision system, either subjectively or objectively.

(2) The determination of the powers or range of human vision and the accommodative and refractive states of the human eye or eyes, including the scope of its or their functions and general condition.

(3) The prescribing or directing the use of, or using, any optical device in connection with ocular exercises, visual training, vision training, or orthoptics.

(4) The prescribing of contact and spectacle lenses for, or the fitting or adaptation of contact and spectacle lenses to, the human eye, including lenses which may be classified as drugs or devices by any law of the United States or of this state.

(5) The use of topical pharmaceutical agents for the sole purpose of the examination of the human eye or eyes for any disease or pathological condition. The topical pharmaceutical agents shall include mydriatics, cycloplegics, anesthetics, and agents for the reversal of mydriasis.

(b) (1) An optometrist who is certified to use therapeutic pharmaceutical agents, pursuant to Section 3041.3, may also diagnose and exclusively treat the human eye or eyes, or any of its appendages, for all of the following conditions:

(A) Through medical treatment, infections of the anterior segment and adnexa, excluding the lacrimal gland, the lacrimal drainage system and the sclera. Nothing in this section shall authorize any optometrist to treat a person with AIDS for ocular infections.

(B) Ocular allergies of the anterior segment and adnexa.

(C) Ocular inflammation, nonsurgical in cause, limited to inflammation resulting from traumatic iritis, peripheral corneal inflammatory keratitis, episcleritis, and unilateral nonrecurrent nongranulomatous idiopathic iritis in patients over ~~the age of 18~~ *18 years of age*. Unilateral nongranulomatous idiopathic iritis recurring within one year of the initial occurrence shall be referred to an ophthalmologist. An optometrist shall consult with an ophthalmologist if a patient has a recurrent case of episcleritis within one year of the initial occurrence. An optometrist shall consult with an ophthalmologist if a patient has a recurrent case of peripheral corneal inflammatory keratitis within one year of the initial occurrence.

(D) Traumatic or recurrent conjunctival or corneal abrasions and erosions.

(E) Corneal surface disease and dry eyes.

(F) Ocular pain, not related to surgery, associated with conditions optometrists are authorized to treat.

(G) Pursuant to subdivision (f), primary open angle glaucoma in patients over ~~the age of 18~~ *18 years of age*.

(2) For purposes of this section, "treat" means the use of therapeutic pharmaceutical agents, as described in subdivision (c), and the procedures described in subdivision (e).

(c) In diagnosing and treating the conditions listed in subdivision (b), an optometrist certified to use therapeutic pharmaceutical agents pursuant to Section 3041.3, may use all of the following therapeutic pharmaceutical agents exclusively:

(1) All of the topical pharmaceutical agents listed in paragraph (5) of subdivision (a) as well as topical miotics for diagnostic purposes.

(2) Topical lubricants.

(3) Topical antiallergy agents. In using topical steroid medication for the treatment of ocular allergies, an optometrist shall do the following:

(A) Consult with an ophthalmologist if the patient's condition worsens 72 hours after diagnosis.

(B) Consult with an ophthalmologist if the inflammation is still present three weeks after diagnosis.

(C) Refer the patient to an ophthalmologist if the patient is still on the medication six weeks after diagnosis.

(D) Refer the patient to an ophthalmologist if the patient's condition recurs within three months.

(4) Topical antiinflammatories. In using topical steroid medication for:

(A) Unilateral nonrecurrent nongranulomatous idiopathic iritis or episcleritis, an optometrist shall consult with an ophthalmologist if the patient's condition worsens 72 hours after the diagnosis, or if the patient's condition has not resolved three weeks after diagnosis. If the patient is still receiving medication for these conditions six weeks after diagnosis, the optometrist shall refer the patient to an ophthalmologist.

(B) Peripheral corneal inflammatory keratitis, excluding Moorens and Terriens diseases, an optometrist shall consult with an ophthalmologist if the patient's condition worsens 48 hours after diagnosis. If the patient is still receiving the medication two weeks after diagnosis, the optometrist shall refer the patient to an ophthalmologist.

(C) Traumatic iritis, an optometrist shall consult with an ophthalmologist if the patient's condition worsens 72 hours after

diagnosis and shall refer the patient to an ophthalmologist if the patient's condition has not resolved one week after diagnosis.

(5) Topical antibiotic agents.

(6) Topical hyperosmotics.

(7) Topical antiglaucoma agents pursuant to the certification process defined in subdivision (f).

(A) The optometrist shall not use more than two concurrent topical medications in treating the patient for primary open angle glaucoma. A single combination medication that contains two pharmacological agents shall be considered as two medications.

(B) The optometrist shall refer the patient to an ophthalmologist if requested by the patient, if treatment goals are not achieved with the use of two topical medications or if indications of narrow angle or secondary glaucoma develop.

(C) If the glaucoma patient also has diabetes, the optometrist shall consult in writing with the physician treating the patient's diabetes in developing the glaucoma treatment plan and shall notify the physician in writing of any changes in the patient's glaucoma medication. The physician shall provide written confirmation of those consultations and notifications.

(8) Nonprescription medications used for the rational treatment of an ocular disorder.

(9) Oral antihistamines. In using oral antihistamines for the treatment of ocular allergies, the optometrist shall refer the patient to an ophthalmologist if the patient's condition has not resolved two weeks after diagnosis.

(10) Prescription oral nonsteroidal antiinflammatory agents. The agents shall be limited to three days' use. If the patient's condition has not resolved three days after diagnosis, the optometrist shall refer the patient to an ophthalmologist.

(11) The following oral antibiotics for medical treatment as set forth in subparagraph (A) of paragraph (1) of subdivision (b): tetracyclines, dicloxacillin, amoxicillin, amoxicillin with clavulanate, erythromycin, clarythromycin, cephalexin, cephadroxil, cefaclor, trimethoprim with sulfamethoxazole, ciprofloxacin, and azithromycin. The use of azithromycin shall be limited to the treatment of eyelid infections and chlamydial disease manifesting in the eyes.

(A) If the patient has been diagnosed with a central corneal ulcer and the condition has not improved 24 hours after diagnosis, the

optometrist shall consult with an ophthalmologist. If the central corneal ulcer has not improved 48 hours after diagnosis, the optometrist shall refer the patient to an ophthalmologist. If the patient is still receiving antibiotics 10 days after diagnosis, the optometrist shall refer the patient to an ophthalmologist.

(B) If the patient has been diagnosed with preseptal cellulitis or dacryocystitis and the condition has not improved 72 hours after diagnosis, the optometrist shall refer the patient to an ophthalmologist. If a patient with preseptal cellulitis or dacryocystitis is still receiving oral antibiotics 10 days after diagnosis, the optometrist shall refer the patient to an ophthalmologist.

(C) If the patient has been diagnosed with blepharitis and the patient's condition does not improve after six weeks of treatment, the optometrist shall consult with an ophthalmologist.

(D) For the medical treatment of all other medical conditions as set forth in subparagraph (A) of paragraph (1) of subdivision (b), if the patient's condition worsens 72 hours after diagnosis, the optometrist shall consult with an ophthalmologist. If the patient's condition has not resolved 10 days after diagnosis, the optometrist shall refer the patient to an ophthalmologist.

(12) Topical antiviral medication and oral acyclovir for the medical treatment of the following: herpes simplex viral keratitis, herpes simplex viral conjunctivitis, and periocular herpes simplex viral dermatitis; and varicella zoster viral keratitis, varicella zoster viral conjunctivitis, and periocular varicella zoster viral dermatitis.

(A) If the patient has been diagnosed with herpes simplex keratitis or varicella zoster viral keratitis and the patient's condition has not improved seven days after diagnosis, the optometrist shall refer the patient to an ophthalmologist. If a patient's condition has not resolved three weeks after diagnosis, the optometrist shall refer the patient to an ophthalmologist.

(B) If the patient has been diagnosed with herpes simplex viral conjunctivitis, herpes simplex viral dermatitis, varicella zoster viral conjunctivitis, or varicella zoster viral dermatitis, and if the patient's condition worsens seven days after diagnosis, the optometrist shall consult with an ophthalmologist. If the patient's condition has not resolved three weeks after diagnosis, the optometrist shall refer the patient to an ophthalmologist.

(C) In all cases, the use of topical antiviral medication shall be limited to three weeks, and the use of oral acyclovir shall be limited to 10 days.

(13) Oral analgesics that are not controlled substances.

(14) Codeine with compounds and hydrocodone with compounds as listed in the California Uniform Controlled Substances Act (Section 11000 of the Health and Safety Code et seq.) and the United States Uniform Controlled Substances Act (21 U.S.C. Sec. 801 et seq.). The use of these agents shall be limited to three days, with a referral to an ophthalmologist if the pain persists.

(d) In any case where this chapter requires that an optometrist consult with an ophthalmologist, the optometrist shall maintain a written record in the patient's file of the information provided to the ophthalmologist, the ophthalmologist's response and any other relevant information. Upon the consulting ophthalmologist's request, the optometrist shall furnish a copy of the record to the ophthalmologist.

(e) An optometrist who is certified to use therapeutic pharmaceutical agents pursuant to Section 3041.3 may also perform all of the following:

(1) Mechanical epilation.

(2) Ordering of smears, cultures, sensitivities, complete blood count, mycobacterial culture, acid fast stain, and urinalysis.

(3) Punctal occlusion by plugs, excluding laser, cautery, diathermy, cryotherapy, or other means constituting surgery as defined in this chapter.

(4) The prescription of therapeutic contact lenses.

(5) Removal of foreign bodies ~~of~~ *from* the cornea, eyelid, and conjunctiva. Corneal foreign bodies shall be nonperforating, be no deeper than the anterior stroma, and require no surgical repair upon removal. Within the central three millimeters of the cornea, the use of sharp instruments is prohibited.

(6) For patients over ~~the age of 12 years~~ *12 years of age*, lacrimal irrigation and dilation, excluding probing of the nasal lacrimal tract. The State Board of Optometry shall certify an optometrist to perform this procedure after completing 10 of the procedures under the supervision of an ophthalmologist as confirmed by the ophthalmologist.

(7) No injections other than the use of an auto-injector to counter anaphylaxis.

(f) The State Board of Optometry shall grant a certificate to an optometrist certified pursuant to Section 3041.3 for the treatment of primary open angle glaucoma in patients over ~~the age of 18~~ *18 years of age* only after the optometrist meets the following requirements:

(1) Satisfactory completion of a didactic course of not less than 24 hours in the diagnosis, pharmacological and other treatment and management of glaucoma. The 24-hour glaucoma curriculum shall be developed by an accredited California school of optometry. Any applicant who graduated from an accredited California school of optometry on or after May 1, 2000, shall be exempt from the 24-hour didactic course requirement contained in this paragraph.

(2) After completion of the requirement contained in paragraph (1), collaborative treatment of 50 glaucoma patients for a period of two years for each patient under the following terms:

(A) After the optometrist makes a provisional diagnosis of glaucoma, the optometrist and the patient shall identify a collaborating ophthalmologist.

(B) The optometrist shall develop a treatment plan that considers for each patient target intraocular pressures, optic nerve appearance and visual field testing for each eye, and an initial proposal for therapy.

(C) The optometrist shall transmit relevant information from the examination and history taken of the patient along with the treatment plan to the collaborating ophthalmologist. The collaborating ophthalmologist shall confirm or refute the glaucoma diagnosis within 30 days. To accomplish this, the collaborating ophthalmologist shall perform a physical examination of the patient.

(D) Once the collaborating ophthalmologist confirms the diagnosis and approves the treatment plan in writing, the optometrist may begin treatment.

(E) The optometrist shall use no more than two concurrent topical medications in treating the patient for glaucoma. A single combination medication that contains two pharmacologic agents shall be considered as two medications. The optometrist shall notify the collaborating ophthalmologist in writing if there is any change in the medication used to treat the patient for glaucoma.

(F) Annually after commencing treatment, the optometrist shall provide a written report to the collaborating ophthalmologist about the achievement of goals contained in the treatment plan. The collaborating ophthalmologist shall acknowledge receipt of the report in writing to the optometrist within 10 days.

(G) The optometrist shall refer the patient to an ophthalmologist if requested by the patient, if treatment goals are not achieved with the use of two topical medications, or if indications of secondary glaucoma develop. At his or her discretion, the collaborating ophthalmologist may periodically examine the patient.

(H) If the glaucoma patient also has diabetes, the optometrist shall consult in writing with the physician treating the patient's diabetes in preparation of the treatment plan and shall notify the physician in writing if there is any change in the patient's glaucoma medication. The physician shall provide written confirmation of the consultations and notifications.

(I) The optometrist shall provide the following information to the patient in writing: nature of the working or suspected diagnosis, consultation evaluation by a collaborating ophthalmologist, treatment plan goals, expected followup care, and a description of the referral requirements. The document containing the information shall be signed and dated by both the optometrist and the ophthalmologist and maintained in their files.

(3) When the requirements contained in paragraphs (1) and (2) have been satisfied, the optometrist shall submit proof of completion to the State Board of Optometry and apply for a certificate to treat primary open angle glaucoma. That proof shall include corroborating information from the collaborating ophthalmologist. If the ophthalmologist fails to respond within 60 days of a request for information from the State Board of Optometry, the board may act on the optometrist's application without that corroborating information.

(4) After an optometrist has treated a total of 50 patients for a period of two years each and has received certification from the State Board of Optometry, the optometrist may treat the original 50 collaboratively treated patients independently, with the written consent of the patient. However, any glaucoma patients seen by the optometrist before the two-year period has expired for each of the 50 patients shall be treated under the collaboration protocols described in this section.

*(5) For purposes of this subdivision, "collaborating ophthalmologist" means a physician and surgeon who is licensed by the state and in the active practice of ophthalmology in this state.*

(g) Notwithstanding any other provision of law, an optometrist shall not treat children under one year of age with therapeutic pharmaceutical agents.

(h) Any dispensing of a therapeutic pharmaceutical agent by an optometrist shall be without charge.

(i) Notwithstanding any other provision of law, the practice of optometry does not include performing surgery. "Surgery" means any procedure in which human tissue is cut, altered, or otherwise infiltrated by mechanical or laser means in a manner not specifically authorized by this chapter. Nothing in the act amending this section shall limit an optometrist's authority, as it existed prior to the effective date of the act amending this section, to utilize diagnostic laser and ultrasound technology.

(j) All collaborations, consultations, and referrals made by an optometrist pursuant to this section shall be to an ophthalmologist located geographically appropriate to the patient.

(k) An optometrist licensed under this chapter is ~~a licentiate for purposes of paragraph (2) of subdivision (a) of Section 805, and, thus, is a health care practitioner subject to the provisions of Section 2290.5 pursuant to subdivision (b) of that section.~~ *subject to the provisions of Section 2290.5 for purposes of practicing telemedicine.*

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